

In Re Application of

MESA POWER GROUP, LLC

Applicant

pursuant to 28 U.S.C. § 1782 For Judicial Assistance in Obtaining Evidence from SAMSUNG C&T AMERICA, INC., KYO IN CHOO and JIN GOO KWON For Use in a Foreign and International Proceeding

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

INDEX NO. 2:11-MC-280-ES/CW

STIPULATION AND ORDER

WHEREAS applicant Mesa Power Group, LLC ("Mesa") had filed an ex parte application pursuant to 28 U.S.C. § 1782, which application has been addressed in this Court's Opinion and Order dated November 20, 2012 [Docket No. 4], pursuant to which Mesa has issued certain subpoenas to which the respondents objected; and the parties having conferred in an effort to resolve their differences,

IT IS HEREBY STIPULATED by and between the parties hereto through their respective attorneys that Mesa and Samsung C&T America, Inc. ("Samsung C&T America"), Kyo In Choo and Jin Goo Kwon have agreed to resolve their dispute regarding the subpoenas issued by Mesa as follows:

A. Document Production:

Samsung C&T America agrees to produce any of the following documents in its possession:

(1) **All communications between Samsung C&T America and the Canadian Government** (includes subnational governments and agencies and state enterprises) relating to the negotiation of the Green Energy Investment Agreement ("GEIA"), the GEIA Amendment, and their attachments, schedules, applications, and proposals up through the date of execution of the GEIA Amendment.

(2) **All communications between Samsung C&T America and the Canadian Government** with respect to the satisfaction, extension, modification, or waivers of the requirements or milestones set forth in the GEIA or the GEIA Amendment up through the date of the document production.

(3) **All communications between the Korean Consortium, including Samsung C&T Corporation or KEPCO members of the Working Group as defined in the GEIA**, and the Canadian Government regarding the negotiation of the GEIA and the GEIA Amendment,

attachments, and proposals regarding same up through the date of execution of the GEIA Amendment.

(4) All communications between (i) Samsung Renewable Energy, Inc. ("SRE") and the Canadian Government, and (ii) Samsung C&T Corporation, and the Canadian Government, that are in Samsung C&T America's possession relating to the negotiation of the GEIA, the GEIA Amendment, and their attachments, schedules, applications, and proposals up through the date of execution of the GEIA Amendment or with respect to the satisfaction, extension, modification, or waivers of the requirements or milestones set forth in the GEIA or the GEIA Amendment up through the date of the document production.

It is agreed by the parties that Samsung C&T America will produce any such documents in its possession on or before February 15, 2013.

B. Depositions

The parties agree that Mesa withdraws its subpoenas for the depositions of Kyo In Choo and Jin Goo Kwon..

C. Representations

Samsung C&T America makes the following representations:

(1) Samsung C&T Corporation, a Korean corporation, owns 100% of the shares of SRE, a company organized and existing under the laws of Ontario, Canada and having its principal place of business at 55 Standish Court, Mississauga, Ontario, Canada. SRE reports directly to Samsung C&T Corporation.

(2) Samsung C&T Corporation directly owns 100% of the shares of Samsung C&T America. Samsung C&T America reports directly to Samsung C&T Corporation.

(3) Samsung C&T America has few, if any, documents responsive to the terms agreed by the parties in Part A of this Stipulation.

D. Confidentiality

Mesa hereby agrees that any documents produced by Samsung C&T America pursuant to this Stipulation will be subject to the Confidentiality Order dated November 21, 2012 in the NAFTA arbitration between Mesa and the Government of Canada as though Samsung C&T America were a "disputing party" as therein defined.

E. Reservation of Rights

This stipulation is without prejudice to any application Mesa may bring under 28 U.S.C. section 1782 in the future and any defenses Samsung C&T America, and its officers and employees, may have to such an application.

Dated:

December 20, 2012

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*Attorneys for Samsung C&T America, Inc., Kyo
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Dated:

December 20, 2012

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Attorneys for Mesa Power Group, LLC

By: 

ORDER [PROPOSED]

Pursuant to stipulation, IT IS ORDERED this ____ day of December, 2012 as follows:

- (1) Samsung C&T America, Inc. shall produce such responsive documents as it may possess under the terms and conditions agreed by the parties in the Stipulation set out above; and
- (2) this Stipulation shall resolve the dispute between the parties regarding, and provide full satisfaction of, the obligations of Samsung C&T America, Inc., Kyo In Choo and Jim Goo Kwon under subpoenas issued by Mesa Power Group, LLC pursuant to this Court's Opinion and Order dated November 20, 2012 and the application pursuant to which such subpoenas were issued.

CATHY L. WALDOR, U.S.M.J.